

1 TRINETTE G. KENT (State Bar No. 222020)
2 KENT LAW OFFICES
3 10645 North Tatum Blvd., Suite 200-192
4 Phoenix, AZ 85028
5 Telephone: (480) 247-9644
6 Facsimile: (480) 717-4781
7 E-mail: tkent@kentlawpc.com

8 *Attorneys for Plaintiff,*
9 *Kiet Huynh*

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 Kiet Huynh,

13 Plaintiff,

14 vs.

15 Trans Union LLC,
16 a Delaware limited liability company, and
17 Bank of America, N.A.,
18 a national association,

19 Defendants.
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Case No.: '16CV2266 W BGS

COMPLAINT

JURY TRIAL DEMAND

1 NOW COMES THE PLAINTIFF, KIET HUYNH, BY AND THROUGH
2 COUNSEL, TRINETTE G. KENT, and for his Complaint against the Defendants,
3
4 pleads as follows:

5 **JURISDICTION**

- 6
7 1. Jurisdiction of this court arises under 15 U.S.C. §1681p.
8
9 2. This is an action brought by a consumer for violation of the Fair Credit
10 Reporting Act (15 U.S.C. §1681, *et seq.* [hereinafter “FCRA”]).

11 **VENUE**

- 12
13 3. The transactions and occurrences which give rise to this action occurred in the
14 City of San Diego, San Diego County, California.
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16 4. Venue is proper in the Southern District of California.

17 **PARTIES**

- 18
19 5. The Defendants to this lawsuit are:
20 a. Trans Union, LLC (“Trans Union”), which is a Delaware Limited
21 Liability Company which maintains its registered agent in Chicago
22 Illinois; and
23
24 b. Bank of America, NA. (“BOA”), which is a national association that
25 maintains its offices in Utica, New York.
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GENERAL ALLEGATIONS

6. On or about September 11, 2012, Mr. Huynh received a letter from Bank of America, stating that he would receive a full forgiveness of the remaining principal balance of \$162,496.29 regarding a Bank of America account with account number 68249007195899 ("Errant Trade Line"). The letter stated that Mr. Huynh's acceptance of the offer was automatic unless it heard from him. It also stated that once it forgave the remaining balance on the account, it would report to the credit bureaus that the account was paid and closed.
7. Mr. Huynh did as the above letter indicated and did not do anything, thus accepting Bank of America's offer.
8. On or about October 29, 2015, Mr. Huynh obtained his Trans Union credit file and noticed that Bank of America reported the Errant Trade Line as a paid charge off.
9. On or about November 12, 2015, Mr. Huynh submitted a letter to Trans Union, disputing the charged off language on the Errant Trade Line.
10. Upon information and belief, Trans Union forwarded Mr. Huynh's consumer dispute to BOA.
11. On or about November 18, 2015, Mr. Huynh received his Trans Union credit file, which showed that Bank of America retained the status of "Account paid in

1 full; was a charge off.” It also showed that Bank of America was reporting
2 multiple charge offs.
3

4 12. On or about December 16, 2015, Mr. Huynh filed a lawsuit under the Fair
5 Credit Reporting Act against Experian, Equifax, and BOA for erroneous
6 reporting of the Errant Trade Line.
7

8 13. On or about December 21, 2015, Mr. Huynh submitted another letter to Trans
9 Union, disputing the Errant Trade Line. In this letter, he disputed the status of
10 “Was a Charge off.” He also disputed the multiple charge offs that Bank of
11 America was reporting under the payment history section of his Trans Union
12 credit file. Mr. Huynh indicated that the multiple charge offs were false, and he
13 again stated that the loan was forgiven. He attached the letter from Bank of
14 America dated September 11, 2012, again confirming the same. Mr. Huynh
15 requested that the status of “Was a Charge Off” be removed from his Trans
16 Union credit file, and he requested that all the charge off language and multiple
17 charge offs be removed from his Trans Union credit file.
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22 14. On or about March 29, 2016, Mr. Huynh obtained his Trans Union credit file.
23 This showed that Bank of America retained the multiple charge offs on the
24 Errant Trade Line. This also showed a remark which stated, “Settled-Less Than
25 Full Balance.”
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1 15. In May 2016, Mr. Huynh's case against Bank of America, Experian, and
2 Equifax was settled.

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4 16. On or about May 26, 2016, Mr. Huynh submitted yet another letter to Trans
5 Union, disputing the Errant Trade Line. In this dispute letter, he disputed the
6 status of "Settled-Less Than Full Balance." In this letter, Mr. Huynh stated that
7 he previously filed a lawsuit against Bank of America and he settled it. Per the
8 terms of the settlement, it was required to report the trade line as "Paid in Full."
9 Mr. Huynh indicated that the Settlement Agreement was confidential and that
10 he could not attach it to the dispute letter. He also disputed the multiple charge
11 offs. He asked that Bank of America properly report the Errant Trade as "Paid
12 in Full" and he requested that it remove the multiple charge offs.
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16 17. On or about June 27, 2016, Mr. Huynh received Trans Union's investigation
17 results, which showed that Bank of America retained the status of "Account
18 paid in Full; was a Charge-Off." This further showed that Bank of America was
19 reporting charge offs each month between May 2012 through September 2012
20 on the Errant Trade Line.
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23 *The Fair Credit Reporting Act and its requirements*
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25 18. There are two types of defendants in this lawsuit. One type of defendant is the
26 credit reporting agencies ("CRAs") which report information about the Plaintiff.
27
28 The second type of defendant in this case is called a Furnisher in the credit

1 reporting industry. A Furnisher is a creditor that furnishes its experience with
2 the Plaintiff, to the CRAs.

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4 19.Both the CRAs and Furnishers credit reporting activities are governed by the
5 FCRA.

6
7 20.This case involves the Defendants reporting charge offs, month after month
8 ("MCOs") on the Plaintiff's Trans Union credit file. The reporting of MCOs is
9 inaccurate, incomplete, unclear, and in violation of the FCRA.

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11 21.Charge-offs are treated as an expense or loss to the creditor. They are
12 referenced in 15 U.S.C. § 1681c of the FCRA. Under this paragraph, generally
13 speaking, a charge off may not be reported on a trade line that is older than 7
14 years, beginning upon the expiration of the 180-day period measured from the
15 delinquency which immediately preceded the charge off. A charge off is a
16 singular, onetime event. Indeed, the Federal Trade Commission has opined that
17 it was Congress' intent in enacting sections 15 U.S.C. §1681c to establish a
18 single date of the delinquency such as to begin the obsolescence period on
19 charge offs. Indeed, a plain reading of the statute shows as much.

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23 22.In today's society, the ability to obtain credit largely determines one's lifestyle
24 and housing options. A charge off is a derogatory piece of information that
25 depresses one's credit score and the reporting of which makes it difficult, if not
26 impossible, for the Plaintiff to obtain credit.
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Defendant(s) are reporting MCOs

23.15 U.S.C. 1692g requires CRAs, upon request, to clearly and accurately disclose all information in a consumer's file.

24. In the case before this court, the Defendants, by reporting MCOs, have failed to make the date of the charge off clear to the Plaintiff and others, including credit grantors. Again, a charge off occurs on a singular date. Without the ability to understand this date from the trade line, it is impossible for the Plaintiff to determine the date that the negative trade line should be removed from the Plaintiff's credit report.

25. The information that the Defendants are providing in their trade lines are neither clear nor accurate for the following reasons:

- a. Because the Status section of the trade line for the Furnisher reports the account status as "charge off" and the payment history grid of these trade lines also reports charge offs, month after month, it appears that the Furnisher is charging off the account again, month after month. There is no legitimate reason for reporting the account as a charge off month after month in the payment history section and in the Status section. It is confusing, unclear, and inaccurate to anyone who receives the Plaintiff's credit report.

1 b. The Defendant Furnisher's trade line offer the Plaintiff no way to verify
2 when the trade line will be removed from his/her credit report. Plaintiff
3 has no way to predict his/her financial future because these MCO trade
4 line is an impediment to the Plaintiff seeking new credit and do not give
5 the Plaintiff enough information to predict when it will fall off.
6

7 c. The MCOs are confusing or are potentially unclear to judgment lenders
8 such as mortgage lenders and their underwriters. These sorts of lenders
9 look beyond the simple credit score to judge whether a consumer meets
10 the guidelines for a mortgage loan. They review each trade line for
11 content. MCOs are confusing, or potentially confusing, to such mortgage
12 lenders. There is no legitimate business reason for the Defendants to
13 report charge offs, month after month, in a payment grid section of a
14 consumer's credit file when the account has already been tagged in the
15 Status section as a charge off.
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17 26. None of the Defendants, it appears, have firm policies or procedures in place to
18 prevent the reporting of MCOs or to manage their reporting at all.
19

20 27. Since the Defendant CRA lack policies and procedures to refrain from reporting
21 MCOs, it is preparing credit reports on the Plaintiff without having adequate
22 policies and procedures in place to assure maximum possible accuracy as
23 required by the FCRA at 15 U.S.C. 1681e(b). Lacking such policies and
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1 procedures, the defendant credit reporting agency is causing great financial and
2 credit damage to the consumer and possibly, for a far longer period than it may
3 legally report. By holding the Plaintiff's credit score under water month after
4 month for an indeterminate time, the Plaintiff's ability to obtain goods, services
5 and credit at reasonable rates, is obliterated. This practice of reporting MCOs is
6 illegal and violated the FCRA.
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9 28. Upon information and belief, all of the defendants favor this MCO policy.

10 Credit reporting is a debt collection activity. The longer that the Defendants
11 can illegally continue to report MCOs on the Plaintiff's credit report, resultantly
12 the longer they can artificially depress the Plaintiff's credit score. The
13 Defendant's apparent goal is to continue holding the Plaintiff's credit score
14 under water for as long as possible, hoping that at some point the Plaintiff will
15 come up gasping for air when he/she has an absolute need for an improve score.
16 When that day comes, the Defendants will hope to get paid.
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18 29. This pattern and practice by the Defendants of reporting MCOs constitutes a
19 willful, or at the very least negligent, violation of the Plaintiff's rights under the
20 FCRA.
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22 30. The damages caused by the reporting of multiple charge offs include angst and
23 emotional distress, financial damage, credit damage, costs, and attorneys' fees.
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COUNT I

**NEGLIGENT VIOLATION OF THE FAIR CREDIT REPORTING ACT
BY BOA**

31.Plaintiff realleges the above paragraphs as if recited verbatim.

32.After being informed by Trans Union of Mr. Huynh’s consumer dispute to the
Errant Trade Line, BOA negligently failed to conduct a proper reinvestigation
of Mr. Huynh’s dispute as required by 15 USC 1681s-2(b).

33.Indeed, BOA was fully aware or should have been aware that its reporting of
MCOs in its trade line on the Plaintiff's consumer credit file with Trans Union
was not only inaccurate, but also illegal. This Defendant was also fully aware
that it was improperly depressing the Plaintiff's credit score, causing great credit
harm and damage to his/her ability to obtain credit.

34.Had BOA conducted a reasonable reinvestigation, it would have known that
there was no reason for it to report its trade line as a charge off in both the
payment history grid and the status section of the Plaintiff's Trans Union credit
report.

35.BOA willfully retained the MCOs making its trade line inaccurate, incomplete,
and/or unclear.

1 36.By retaining the MCOs and directing Trans Union to do the same, this
2 defendant willfully violated its duties under the FCRA, causing economic and
3 emotional damages to the Plaintiff.
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5 37.BOA negligently failed to review all relevant information available to it and
6 provided by Trans Union in conducting its reinvestigation as required by 15
7 USC 1681s-2(b). Specifically, it failed to direct Trans Union to remove the
8 multiple charge offs and the inaccurate status on the Errant Trade Line.
9

10 38.The Errant Trade Line is inaccurate and creates a misleading impression on Mr.
11 Huynh's consumer credit file with Trans Union to which it is reporting such
12 trade line.
13

14 39.As a direct and proximate cause of BOA's negligent failure to perform its duties
15 under the FCRA, Mr. Huynh has suffered damages, mental anguish, suffering,
16 humiliation, and embarrassment.
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18 40.BOA is liable to Mr. Huynh by reason of its violations of the FCRA in an
19 amount to be determined by the trier fact together with reasonable attorneys'
20 fees pursuant to 15 USC 1681o.
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22 41.Mr. Huynh has a private right of action to assert claims against BOA arising
23 under 15 USC 1681s-2(b).
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COUNT II

42. Plaintiff realleges the above paragraphs as if recited verbatim.

43. In the alternative to a Willful Violation of the FCRA, Plaintiff claims that BOA negligently violated his/her rights under this statute.

44. After being informed by Trans Union of Plaintiff's objection to the Defendant's reporting of MCOs, BOA negligently failed to conduct a proper reinvestigation of Plaintiff's dispute as required by 15 USC 1681s-2(b) and to report the results of that investigation to the CRAs.

45. BOA negligently failed to review all relevant information available to it and provided by Trans Union in conducting its reinvestigation as required by 15 USC 1681s-2(b). Alternatively, BOA negligently failed to conduct a reasonable reinvestigation and failed to report the results of a reasonable reinvestigation to Trans Union. Specifically, it failed to direct Trans Union to remove the MCOs from its trade line and it failed to update the status of the Errant Trade Line.

1 46.As a direct and proximate cause of BOA's negligent failure to perform its duties
2 under the FCRA, Plaintiff has suffered credit and financial damages, mental
3 anguish, suffering, humiliation, and embarrassment.
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5 47.BOA is liable to Plaintiff by reason of its violations of the FCRA in an amount
6 to be determined by the trier of fact together with reasonable attorneys' fees
7 pursuant to 15 USC 1681o.
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11 **WHEREFORE, PLAINTIFF PRAYS** that this Court grant him a judgment
12 against BOA for damages, costs, interest, and attorneys' fees.
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14 **COUNT III**

15 **WILLFUL VIOLATION OF THE FAIR CREDIT REPORTING ACT**
16 **BY TRANS UNION**

17 48.Plaintiff realleges the above paragraphs as if recited verbatim.

18 49.Defendant Trans Union prepared, compiled, issued, assembled, transferred,
19 published, and otherwise reproduced consumer reports regarding Plaintiff as
20 that term is defined in 15 USC 1681a.
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22 50.Such reports contained information about the Plaintiff that was false,
23 misleading, and inaccurate.
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25 51.Trans Union negligently failed to maintain and/or follow reasonable procedures
26 to assure maximum possible accuracy of the information it reported to one or
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1 more third parties pertaining to the Plaintiff, in violation of 15 USC 1681e(b).

2 Glaringly missing from a list of policies and procedures are:

- 3
- 4 a. one that would cause this Defendant to refrain from reporting MCOs as
- 5 this defendant has;
- 6
- 7 b. one that would give the Plaintiff an ability to reconcile his records with
- 8 the information provided in the trade lines that report MCOs that would
- 9 allow the Plaintiff to predict when an MCO trade line will fall off;
- 10
- 11 c. one that would provide for clear and accurate reporting of a charge off;
- 12 there is no sound business reason for this defendant to report MCOs
- 13 month after month while, at the same time, report the account as a charge
- 14 off in the Status section of the Plaintiff's consumer credit file. This
- 15 reporting is inaccurate and unclear.
- 16

17 52. There is no legitimate reason for this defendant to report charge offs, month

18 after month, in the payment grid section of the Plaintiff's consumer credit file

19 when the very same information is present in the Status section of such trade

20 line(s) that contain the MCOs.

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23 53. The reporting of MCOs is unclear and inaccurate to the Plaintiff. Pursuant to

24 15 U.S.C. 1681g, a CRA must clearly and accurately disclose the information in

25 a consumer's credit file. The information contained in the Plaintiff's consumer

26 credit file with this Defendant is neither clear nor accurate. For example, the

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1 trade line reporting MCOs provides inaccurate beginning dates of charge off.
2 Plaintiff has calculated the seven year reporting period based on that charge off
3 date and has been unable to confirm when the trade will become obsolete and
4 removed from his credit report. Without the ability to reconcile his records to
5 the date of the charge off, Plaintiff is deprived of the ability to predict when he
6 can apply for new credit and new financial start.
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10 54. Moreover, this Defendant's policies and procedures fail to address the fact that
11 reporting multiple charge offs in both the payment history section and the
12 Status section of the Plaintiff's credit report simultaneously is misleading,
13 confusing, and lacks any legitimate business purpose for either the Furnisher or
14 this CRA.
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17 55. After receiving Plaintiff's consumer dispute to the Errant Trade Line, Trans
18 Union negligently failed to conduct a reasonable investigation as required by 15
19 U.S.C. 1681i.
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21 56. As a direct and proximate cause of Trans Union's negligent failure to perform
22 its duties under the FCRA, Plaintiff has suffered actual damages, mental
23 anguish and suffering, humiliation, and embarrassment.
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25 57. Trans Union is liable to Plaintiff by reason of its violation of the FCRA in an
26 amount to be determined by the trier of fact together with his reasonable attorneys'
27 fees pursuant to 15 USC 1681n.
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WHEREFORE, PLAINTIFF PRAYS that this court grant him a judgment against Trans Union for actual damages, costs, interest, and attorneys' fees.

COUNT IV

NEGLIGENT VIOLATION OF THE FAIR CREDIT REPORTING ACT BY TRANS UNION

58.Plaintiff realleges the above paragraphs as if recited verbatim.

59.Defendant Trans Union prepared, compiled, issued, assembled, transferred, published, and otherwise reproduced consumer reports regarding Plaintiff as that term is defined in 15 USC 1681a.

60.Such reports contained information about Plaintiff, such as the multiple charge offs, that was neither clear nor accurate as required by 15 U.S.C. 1681g(a)(1). The multiple charge offs are inaccurate because they lack a singular origin date by which to measure the 7 year reporting period. They are also inaccurate because they convey to a consumer that an account has been charged off month after month, when in fact, the account has only one charge off date.

61.The multiple charge offs are also unclear, because this CRA has not provided a legend on its credit report to clearly explain that the charge off has a beginning date and what that beginning date is. The credit reports produced by this defendant further fail to make clear when the multiple charge offs **will** come off the credit report and the credit report lacks enough information to allow the

1 Plaintiff to verify these dates even if they were presented on the credit report for
2 the Plaintiff or anyone else to see.

3
4 62. Trans Union has produced credit reports and disclosures that were false,
5 misleading, and inaccurate. Indeed, the multiple charge offs, by themselves, are
6 false, misleading, inaccurate, and unclear.
7

8 63. Trans Union has negligently failed to maintain and/or follow reasonable
9 procedures to assure maximum possible accuracy of the information that it
10 reported to one or more third parties pertaining to Plaintiff, in violation of 15
11 USC 1681e(b). Indeed, Trans Union has no policies that prevent the reporting
12 of multiple charge offs, nor does it have any policies that govern how long
13 multiple charge offs, even if legal and proper, may be reported on the Plaintiff's
14 credit report.
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17 64. After receiving Plaintiff's consumer dispute to the Errant Trade Line, Trans
18 Union negligently failed to conduct a reasonable investigation as required by 15
19 U.S.C. 1681i. Indeed, it merely retained the multiple charge offs, which are
20 illegal, confusing, inaccurate, and unclear.
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23 65. As a direct and proximate cause of Trans Union's negligent failure to perform
24 its duties under the FCRA, Plaintiff has suffered actual credit and financial
25 damages, mental anguish and suffering, humiliation, and embarrassment.
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1 66. Due to Trans Union's actions and inactions in connection with its failure to
2 conduct a reasonable reinvestigation, Plaintiff has suffered damages, including
3 but not limited to an artificially and illegally depressed credit score.
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5 67. Trans Union is liable to Plaintiff by reason of its violations of the FCRA in an
6 amount to be determined by the trier of fact together with his reasonable
7 attorneys' fees pursuant to 15 USC 1681o.
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10 **WHEREFORE, PLAINTIFF PRAYS** that this court grant him a judgment
11 against Defendant Trans Union for the greater of statutory or actual damages, plus
12 punitive damages along with costs, interest, and reasonable attorneys' fees.
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16 **JURY DEMAND**

17 Plaintiff hereby demands a trial by Jury.
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20 DATED: September 7, 2016
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22

23 By: /s/ Trinette G. Kent
24 Attorneys for Plaintiff,
25 Kiet Huynh
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